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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,557	10/20/2003	Borden M. Larson	20238.18CON	8391

7590 06/15/2005

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EXAMINER

VASUDEVA, AJAY

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,557

Applicant(s)

LARSON ET AL.

Examiner

Ajay Vasudeva

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-6, 8-11, and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by McCulloh (US 3,987,746 A).

McCulloh discloses an apparatus (figure 1) having a towing vessel, and a skeletal towing frame fitted above the vessel for supporting an elevated tow rope attachment point. The towing frame has a first and second vertical supports [13], and a third vertical support [also 13] extending upwardly and aft (see figure 6). A horizontal bridging portion [15] is provided to bridge the vertical supports. An operator's station for operating a launching boom is disposed between the gunwales and positioned at least amidships (see figure 3). The attachment point is positioned at a level that is above a level of operator's station. Regarding claims 14 and 15, figures 1-3 show both rearwardly and forwardly angled supports.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 2, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCulloh (US 3,987,746 A) in view of Sell (US 3,890,918 A).

McCulloh discloses a tow apparatus with vertical supports, as above, with all limitations of claims 1, 6 and 11. However, McCulloh is silent on the vertical supports being rotatable for storage.

Sell describes the vertical towing supports being rotatable (figure 2).

It would have been obvious for one skilled in the art at the time of the invention to make the vertical supports of McCulloh rotatable, as taught by Sell. Making the supports rotatable would enable storage of the tow apparatus without a need for its removal from the deck of the boat.

Response to Arguments

5. Applicant's arguments filed 5/31/2005 with respect to claim 1-16 have been considered but are moot in view of the new ground(s) of rejection.

Examiner's Observations

6. Re the independent claims 1, 6 and 11, applicant is again reminded that the limitations "for supporting an elevated tow rope attachment point" and "for attaching a tow rope for towing the performer" are merely intended use limitations because they do not positively recite an elevated tow rope attachment point attached to the bridging portion, or an attachment of a tow rope to the tow rope attachment point. In absence of such positive recitations, no patentable weight has been given to such limitations.

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Further, the newly added limitation “the bridging portion is sufficient for withstanding forces from towing a human performer” is not the same as the limitation “the towing frame having a structural strength to withstand a force of towing a human performer behind the boat by a rope attached to the frame”. The newly amended limitation discussed above can broadly be interpreted to mean that the bridging portion, independently, is strong enough to withstanding forces from towing a performer – if/when used at a different location on the boat -- but the towing frame itself to which the bridging portion is attached may not necessarily be strong enough to withstand such force.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- The prior art cited in the attached PTO Form 892 shows boats having skeletal frames.
- The archived Web page of **Joystick Wakeboarding**, dated 12 December 12 1998, shows boat frames capable of towing a human performer. However, at this time, enough information is not available as to whether the Joystick Wakeboarding had made or sold such products before the priority date claimed by the applicant. Applicant is requested to review this document.
- Applicant may also note that applicant's Design patent filed Oct 27, 1997 does not disclose the claimed features of the instant invention, such as an attachment to a boat, or a use of the frame for towing a performer. Therefore, the instant invention is

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believed to have a benefit of priority date to the later date 3/09/1998 (SN 09/036,826 filed 03/09/1998, now PAT 5,979,350), and not to 10/27/1997 (US D409972).

8. Applicant's representative, Mr. Carl Napolitano, is invited to contact the examiner by telephone to discuss a language for the claims that the examiner believes to be allowable.

9. This action is a Non-Final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 -- 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AV

Ajay Vasudeva
Examiner
Art Unit 3617

Ajay Vasudeva 6/13/05

**AJAY VASUDEVA
PATENT EXAMINER**